

Chapter V. Criminal Rules

Rule 5.1 Misdemeanors (Effective 7/1/03)

Rule 5.1.1 Filings of Actions (Effective 7/1/03)

All misdemeanor cases filed in the Superior Court of California, County of Kern, will be presented at the Criminal Division/Counter of the appropriate Court division, excluding cases in which the sole misdemeanor charge is a violation of Section 12500(a) of the Vehicle Code. Filings are accepted Monday through Friday from 8:00 a.m. to 5:00 p.m. (Effective 7/1/03)

Rule 5.1.2 Motions (Effective 7/1/03; rev. 1/1/06)

All criminal matters filed for Law and Motion hearings shall comply with all applicable laws and Rules of Court. If a motion is to be abandoned, notice shall be given to the court as soon as reasonably possible. Business hours for the filing of any paper and court calendars concerning misdemeanor proceedings are set forth in Addendum 1D. Addendums, which are subject to change, are posted on the court website or available for free at all Kern County Court locations. (Effective 7/1/03; rev. 1/1/06)

Rule 5.1.3 Miscellaneous Proceedings (Effective 7/1/03; stricken 1/1/06)

Rule 5.1.4 Appeal From Electronically Recorded Misdemeanor Proceedings (Effective 7/1/03)

Section 8.789 of the California Rules of Court is adopted and governs all misdemeanor appeals where the proceedings were electronically recorded. (Effective 7/1/03)

Rule 5.2 Felonies (Effective 7/1/03)

Rule 5.2.1 Case Management (Effective 7/1/03)

Rule 5.2.1.1 Arraignment (Effective 7/1/03)

At the initial arraignment, each case will be assigned pre-preliminary hearing and preliminary hearing dates. Probation revocation and exclusion hearings may be set concurrently with the pre-preliminary hearing and preliminary hearing. At arraignment following an order holding the defendant to answer, each case will be assigned motion, readiness and trial dates. Arraignments are held as provided in Addendum 1C. Addendums, which are subject to change, are posted on the court website or available for free at all Kern County Court locations. (Effective 7/1/03; rev. 7/1/04)

Rule 5.2.1.2 Pre-Preliminary Hearing/Readiness Conference (Effective 7/1/03)

At the pre-preliminary, and later at the readiness conference, the court will attempt to resolve the cases pending against the defendant. Any proposed dispositions after the pre-preliminary hearing conference and before the start of the preliminary hearing are to be approved by the judge who presided at the pre-preliminary hearing conference, in the exercise of their discretion based upon the circumstances then presented to the court. Any proposed dispositions after the readiness conference and before commencement of the evidentiary portion of the trial of the matter are to be approved by the judge who presided at the readiness conference, in the exercise of their discretion based upon the circumstances then presented to the court. (Effective 7/1/03)

Rule 5.2.1.3 Motions - Generally (Effective 7/1/03)

Motions are either evidentiary (requiring the presentation of evidence other than declarations or a transcript) or non-evidentiary and are heard pursuant to Addendum 1C. Addendums, which are subject to change, are posted on the court website or available for free at all Kern County Court locations. Except as otherwise provided by law or order shortening or lengthening time, motions must be filed and served no later than ten (10) days before the hearing on the motion. (Effective 7/1/03)

Rule 5.2.1.4 Particular Motions (Effective 7/1/03)

Rule

5.2.1.4.1 Motions to Sever/Consolidate (Effective 7/1/03)

Motions to sever counts based exclusively upon the claim that separate classes of crimes are improperly joined must be set on the criminal calendar. All other motions to sever, including those based upon Aranda, must be made in the trial court. Motions to consolidate or to sever cases previously consolidated for trial must reflect in their title the number of each case for which consolidation or severance is sought, the applicable motion, trial, and readiness dates, and must also include a proposed amended information. The case number for a consolidated case is the lowest case number of the affected cases. (Effective 7/1/03)

Rule

5.2.1.4.2 Section 995 (Effective 7/1/03)

Motions pursuant to Penal Code Section 995 must refer by page and line to that portion of the transcript upon which the parties rely. (Effective 7/1/03)

Rule

5.2.1.4.3 Motions to Modify (Effective 7/1/03)

Except for cases processed pursuant to Penal Code section 1210.10 (Proposition

36) and cases where sentence was imposed after trial, motions to modify sentences must be heard on the criminal calendar. Motions to modify cases processed pursuant to Penal Code Section 1210.10 must be heard as provided in Addendum 1C. Addendums, which are subject to change, are posted on the court website or available for free at all Kern County Court locations. (Effective 7/1/03)

Rule

5.2.1.4.4 Orders Shortening Time (Effective 7/1/03)

Applications for orders shortening time must be presented to the Clerk's Office and must include a proposed order providing in substance that service must be made upon opposing counsel no later than _____ a.m./p.m. on _____, 200_. (Effective 7/1/03)

Rule 5.2.2 Calendars (Effective 7/1/03; rev. 1/1/06)

Business hours for the filing of any paper and court calendars concerning felony proceedings are set forth in Addendum 1C. Addendums, which are subject to change, are posted on the court website or available for free at all Kern County Court locations. (Effective 7/1/03; rev. 1/1/06)

Rule 5.3 Rules Applicable to All Criminal Cases (Effective 7/1/03)

Rule 5.3.1 Appointment of Investigators/Ancillary Services (Effective 7/1/03)

Requests for the appointment of investigators or other ancillary services must be submitted to the Clerk's Office. In capital cases, such requests must be determined by the Presiding Judge. All other requests must be determined by the judge assigned to the criminal calendar, except that such requests made during trial must be made to the trial judge. Requests for funds must be accompanied by counsel's declaration indicating all charges and enhancements then pending, the amount sought, the reasons for that amount, the number and type of applications previously made, and the amount of funding previously ordered. Copies of papers previously submitted which resulted in an order denying funds must be attached to the declaration. (Effective 7/1/03)

Rule 5.3.2 Evidence Code Section 1017 (Effective 7/1/03)

Appointments made pursuant to Evidence Code Section 1017 may be made upon ex parte application. The party obtaining an appointment must serve a copy of the order upon the District Attorney's Office within two (2) court days of the order's date. Proof of service must be filed with the court. (Effective 7/1/03)

Rule 5.3.3 Release of Evidence/Discovery (Effective 7/1/03)

Upon a written stipulation and for good cause shown, orders may be obtained permitting the release of physical evidence for the purposes of testing, the release of property (other than weapons and contraband) to its lawful owner, and

uncontested discovery. (Effective 7/1/03)

Rule 5.3.4 1203.4 Penal Code Motions and Associated Motions (Effective 7/1/03)

- (a) A motion for dismissal of a case pursuant to Penal Code Sections 1203.4 or 1203.4(a) shall be filed with the court with proof of service on the District Attorney's office. The court will refer the matter to the Probation Department for review and recommendation prior to the hearing on the motion. The moving party shall be required to pay any fees charged by the Probation Department for such review. If the District Attorney's office does not wish to oppose the motion, it may file a notice of non-opposition, and then need not appear at the hearing. (Effective 7/1/03)
- (b) A motion for the early termination of probation shall be a separate noticed motion filed with the Court. (Effective 7/1/03)